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NEW JERSEY STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

on this date of: OCT. 28, 2000

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF VETERINARY MEDICAL EXAMINERS

In the Matter of:

GEOFFREY GOLDWORM, V.M.D.

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FINAL ORDER

This matter was opened before the New Jersey State Board of Veterinary Medical Examiners (the "Board") upon the filing, on October 28, 1999, of a Uniform Penalty Letter ("UPL"), wherein the Board preliminarily concluded that respondent Geoffrey Goldworm, V.M.D., had violated N.J.A.C. 13:44-4.7, by failing to provide emergency care to a dog who presented with symptoms to include gagging, throwing up, coughing, shortness of breath and extreme discomfort. The UPL further included a finding that certain advertising placed by the "Clementon Animal Hospital" and "Associated Veterinary Emergency Services" was deceptive and misleading (by implying that the facility was available to treat emergency cases "24 hours a day"). The UPL was issued following the Board's review of a written consumer complaint received from Kathleen and Joseph Turner dated August 31, 1999, copies of certain "yellow page" advertisements placed by "Associated Veterinary Emergency Service" and "Clementon Animal Hospital," and a written reply to the Turners' complaint submitted by respondent dated September 13, 1999¹.

¹ The complaint submitted by the Turners was not against Dr. Goldworm directly, but rather against the "Clementon Animal Hospital". The "Clementon Animal Hospital" and "Associated Veterinary Emergency Service" are entities that list, in their advertising, six veterinarians, to include Dr. Goldworm. Dr. Goldworm has been the only veterinarian to respond to the complaint submitted, and has done so in his stated capacity as "Chief of Staff". By listing himself as "Chief of Staff", and nowhere suggesting that any other veterinarian associated with the "Clementon Animal Hospital" or "Associated Veterinary Emergency Service" has any responsibility or involvement in this matter, the Board has consistently considered Dr. Goldworm to be the individual responsible licensee in this matter.

The UPL included a settlement offer, wherein respondent was offered the opportunity to settle the matter and avoid initiation of formal disciplinary proceedings by acknowledging the Board's findings and agreeing to: 1) pay a civil penalty in the amount of \$1,000; 2) change certain advertisements placed by the "Associated Veterinary Emergency Service" and/or the "Clementon Animal Hospital" suggesting that care was available "24 hours a day," and 3) cease and desist from deceptive advertising in the future. Alternatively, respondent was offered the options of either requesting a formal hearing on the charges set forth within the UPL (in which case the UPL was to serve as a formal administrative complaint) or waiving any right he might have to a formal hearing and instead submitting a written statement for the Board's final consideration. Respondent elected to waive his right to a formal hearing, and instead submitted a written statement to the Board dated November 5, 1999, wherein he both addressed the specific contentions made by the Turners and the charges of misleading and deceptive advertising set forth within the UPL.

The Board has reviewed and considered respondent's November 5, 1999 submission and has undertaken a second review of all prior submissions. Upon review of said items, the Board has concluded that cause exists to support each of the two charges made within the UPL; namely, that respondent violated N.J.A.C. 13:44-4.7 by failing to provide emergency care to the Turners' dog, and that respondent engaged in deceptive and misleading advertising by placing advertisements that implied that emergency veterinary care was available "24 hours a day." We below review the evidence submitted, and set forth the findings of fact and conclusions of law which we make in this matter.

Review of Evidence Submitted: Within their initial complaint dated August 31, 1999, the Turners alleged that their dog awoke on the morning of August 26, 1999, "gagging, throwing up and coughing." The Turners alleged that they were then concerned that the dog could be choking,

and sought emergency care at Clementon Animal Hospital for their animal. The Turners alleged that they believed the facility to be an "emergency" hospital based, among other items, on certain yellow page advertisements which included language suggesting that the hospital was open and that a veterinarian was available ("in hospital") "24 hours a day." The Turners further alleged that they were told, upon their arrival at 8:15 a.m., that the facility was not then an emergency hospital (instead, they were told that the emergency hospital hours were only from 8:00 p.m. to 8:00 a.m.). The Turners further allege that they were then told that their animal could not be seen until the afternoon, notwithstanding the alleged emergent condition of the animal.

The Turners additionally submitted with their complaint a copy of a yellow page advertisement placed by respondent (which advertisement they claimed in part formed the basis for their belief that the Clementon Animal Hospital was a facility treating emergencies 24 hours a day). The advertisement, for both "Associated Veterinary Emergency Service" and "Clementon Animal Hospital," included the statement "Veterinarian In Hospital 24 Hours a Day" immediately under the banner for "Associated Veterinary Emergency Service" (the words "Emergency Service" appeared in a much larger font than any other words within the entire advertisement). At the bottom of the advertisement, night hours were listed as being from Monday through Friday 8PM-8AM and weekend hours being from Saturday Noon to 8AM Monday.

Respondent initially responded to the above complaint, by correspondence dated September 13, 1999, that the hours of service for the Associated Veterinary Emergency Service were from 8 p.m. to 8 a.m. He further stated that the daytime staff at the Clementon Animal Hospital is instructed to advise clients that present at the Hospital that non-critical emergencies should be seen by the client's regular veterinarian or, if the client does not have a regular veterinarian, that the clients should be offered the next available appointment. Finally, respondent stated that there were

no records regarding the incident complained of by the Turners because the animal was never seen.

Following the issuance of the UPL, respondent submitted a second written response to the Board dated November 5, 1999, wherein respondent addressed the specific claims made by the Turners by stating that “a preliminary diagnosis was made by staff members that [the Turners’] pet was not suffering from a severe life threatening condition and could best be treated during regular business hours” (respondent further pointed out that an appointment was offered a few hours later). With regard to the advertising issue, respondent claimed that the advertising for Associated Veterinary Emergency Service and Clementon Animal Hospital was “clear” and “does not state either facility is ‘24 hours a day’ as suggested in your letter.” Respondent further suggested that other veterinary practices in the area describe “emergency service availability,” when in fact the emergency cases are performed by Associated Veterinary Emergency Services on their behalf.

Findings of Fact and Conclusions of Law: We conclude, based on the evidence before us, that cause exists to support each of the two charges made within the UPL. With regard to the charge that Dr. Goldworm failed to provide emergency care to the Turners’ dog, we note initially that there is no evidence before us, other than the statement made by the Turners, providing specific details regarding the dog’s condition. Significantly, however, we note that the Turners’ claim that their dog was suffering from a potentially life-threatening emergency is not refuted in any way by respondent, and we note further that respondent nowhere states or suggests that any assessment whether or not the dog was suffering from an emergent condition was made by a licensed veterinarian.²

² While respondent states that the assessment was made by “staff”, there is no suggestion that the assessment was made with either input from or involvement by a licensed veterinarian.

Without any evidence to suggest the contrary, we must accept, for purposes of deciding this matter, the claims made by the Turners that the dog was coughing, throwing up, gagging, exhibiting shortness of breath and extreme discomfort. Based thereon, we unanimously find that the Turners' dog presented, on August 26, 1999, in an emergent condition. Given our finding that an emergency existed, we conclude, as a matter of law, that the failure by any veterinarian at the Clementon Animal Hospital to treat the animal constitutes a violation of N.J.A.C. 13:44-4.7, which succinctly and clearly requires licensees to provide emergency care.

Moving to the charges in the UPL that respondent placed a deceptive or misleading advertisement, we note initially that the terms of the advertisement are plain on their face, and thus the only question for decision is whether the statements in the advertisement reasonably can be concluded to state, suggest or imply to the reader that the Hospital is one that offers emergency services 24 hours a day.³ We find that the statement "Veterinarian in Hospital 24 Hours a Day" is a statement that would necessarily suggest and imply to a reader that the emergency services advertised are available 24 hours a day. We find that any suggestion that the emergency services advertised are limited to nighttime and weekends, by the inclusion of specific night hours and weekend hours in the advertisement, is belied by the fact that the advertisement nowhere suggests that similar emergency services are not available during other hours.⁴ Based on said findings, we

³ We reject any suggestion made by respondent that "Associated Veterinary Emergency Service" should be considered to be an entity distinct from the "Clementon Animal Hospital". In making that determination, we note that there is but one facility located at 210 White Horse Pike, Clementon, New Jersey; that the six licensed veterinarians are the same for both entities; and that the yellow page advertisement in question is in fact one advertisement listing both entities. Given those similarities, we conclude that a reasonable consumer would not conclude that the two entities are in any way distinct from one another.

⁴ Finally, we reject respondent's contention that the advertising for "Associated Veterinary Emergency Service" is indistinguishable from advertisements that individual practitioners might place stating that emergency service is "available" or that a 24 hour emergency answering service

conclude that respondent placed a deceptive and misleading advertisement, in violation of N.J.S.A. 45:16-9.3a and N.J.A.C. 13:44-4.8.

Penalty: As set forth above, we have carefully reviewed respondent's written submissions, and concluded that there is insufficient reason present to modify or alter any of the initial preliminary findings made in the UPL. We are satisfied, however, that in this case the penalties initially proposed in the UPL are fair and adequate, and therefore affirm the initial penalties proposed within the UPL.

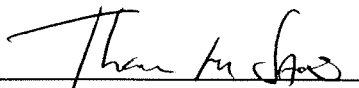
WHEREFORE, it is on this 28th day of January, 2000,

ORDERED:

1. Respondent is hereby assessed a civil penalty in the amount of \$1,000.
2. Respondent is hereby ordered to cease and desist from engaging in any further false or deceptive advertising, and is ordered to change any advertisements that state, suggest or imply that he, "Associated Veterinary Emergency Service" and/or the "Clementon Animal Hospital" provide emergency care to all animals "24 hours a day."

NEW JERSEY STATE
BOARD OF VETERINARY
MEDICAL EXAMINERS

By:


Thomas M. Jacks, Ph.D.
Board President

exists, even in cases where the veterinarians advertising routinely refer such emergencies to Associated Veterinary Emergency Service. Given that such advertisements nowhere suggest that the veterinarian's office, or the advertised facility, is open 24 hours a day, as do the advertisements for Associated Veterinary Emergency Service, we find that such advertisements to be readily distinguishable from the advertisements placed by Associated Veterinary Emergency Service.